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## Santa Ana Regional Water Quality Control Board

March 17, 2022

Myers and Sons Construction, LLC  
Attn: Clinton Myers, Agent for Service of Process  
Attn: Jim Pickett, Legally Responsible Person  
4600 Northgate Boulevard, Suite 100  
Sacramento, California 95834

**Certified Mail**  
**Return Receipt Requested**

Myers and Sons Construction, LLC  
Attn: Jim Pickett, Legally Responsible Person  
4600 Northgate Boulevard, Suite 100  
Sacramento, California 95834  
jpickett@myers-sons.com

**Via Email**

### ***TRANSMITTAL OF MANDATORY MINIMUM PENALTY COMPLIANT NO. R8-2022-0030, MYERS AND SONS CONSTRUCTION WIDID NO. 8 331029148***

Dear Mr. Pickett:

Enclosed is Mandatory Minimum Penalty Compliant No. R8-2022-0030 (Compliant) issued to Myers and Sons Construction, LLC (Discharger). The Complaint alleges that the Discharger has violated California Water Code (Water Code) section 13399.31 by failing to submit its Annual Report for the 2020-21 reporting period as required by the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ and Order No. 2018-0028-DWQ, NPDES No. CAS000001 (Industrial General Permit) for the Radio Road Concrete Batch Plant located at 250 Radio Road in the City of Corona (Facility).

The Complaint proposes that an administrative civil liability in the amount of **three thousand two hundred and fifty-nine dollars (\$3,259)** be imposed. This is the mandatory minimum penalty, including staff costs, as authorized by Water Code section 13399.33, subdivisions (c) and (d).

A public hearing on this matter is scheduled for the Santa Ana Water Board meeting on **June 3, 2022**. Pursuant to Water Code section 13323, the Discharger has the

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KRISTINE MURRAY, CHAIR | JAYNE JOY, EXECUTIVE OFFICER

option to waive its right to a hearing. Should the Discharger waive its right to a hearing and pay the proposed liability, the Santa Ana Water Board may not hold a public hearing on this matter. If the Discharger chooses to waive its right to a hearing, please sign and submit the enclosed Waiver Form. Please make the check payable to the Waste Discharge Permit Fund for **three thousand two hundred and fifty-nine dollars (\$3,259)** and include the Compliant Number (No. R8-2022-0030) on the memo line. Please send the following information to the locations indicated below:

Mail Waiver Form to:  
Santa Ana Water Board  
Attn: Keith Elliott  
3737 Main Street, Suite 500  
Riverside, CA 92501

Mail Payment to:  
SWRCB – Accounting Office  
Attn: Sarah Fong  
P.O. Box 1888  
Sacramento, CA 95812-1888

The Discharger should submit the attached Waiver to the Advisory Team by contacting Katharine Buddingh, attorney for the Advisory Team, via phone at (916) 440-7769 or via e-mail at [Katharine.Buddingh@waterboards.ca.gov](mailto:Katharine.Buddingh@waterboards.ca.gov). The Prosecution Team reserves the right to object to the Discharger's request to pursue Option 2.

If the Discharger does not wish to waive its rights to a hearing, a pre-hearing meeting with the Prosecution Team is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Keith Elliott via phone at (951) 782-4925 or via email to [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov) prior to **April 11, 2022**.

If this matter proceeds to hearing, the Advisory Team will issue a Hearing Procedure which will provide deadlines and establish a process for submitting evidence and argument in this matter.

Additionally, a Fact Sheet describing the Complaint process is enclosed. The Fact Sheet describes the complaint process, explains what the Discharger can expect, and its obligations as the process proceeds.

As described in more detail in the attached Fact Sheet, a separation of functions is in place between the Advisory Team and Prosecution Team. Procedural questions should be directed to the Advisory Team by contacting Katharine Buddingh at the information listed above.

If you have any questions regarding the Complaint or the enclosed documents, please contact Keith Elliott via email at [keith.elliott@waterboards.ca.gov](mailto:keith.elliott@waterboards.ca.gov) or by phone at (951) 782-4925.

All legal questions should be directed to Catherine Hawe, attorney for the Prosecution Team, Office of Enforcement, via phone at (916) 322-3538 or via email at Catherine.Hawe@waterboards.ca.gov.

Sincerely,

Original Signed by

Ann Sturdivant, PG, CEG, CHG  
Assistant Executive Officer

Enclosures: MMP Complaint No. R8-2022-0030 Waiver Form  
Fact Sheet

cc (w/encl): Ms. Jane Joy, (Santa Ana Water Board, Advisory Team)  
Ms. Katharine Buddingh, Office of Chief Counsel (Advisory Team Attorney)  
Ms. Ann Sturdivant, (Santa Ana Water Board Prosecution Team)  
Ms. Catherine Hawe, Office of Enforcement (Prosecution Team Attorney)  
Mr. Aldo Licitra, Riverside County Flood Control and Water Conservation District, alicitra@rivco.org  
Mr. Jeff Potts, City of Corona NPDES Coordinator, jeff.potts@coronaca.gov

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Myers and Sons Construction, LLC  
Att: Clinton Myers, Agent for Services of Process  
Att: Jim Pickett, Legally Responsible Person  
4600 Northgate Boulevard, Suite 100  
Sacramento, California 95834

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

**State of California  
California Regional Water Quality Control Board  
Santa Ana Region**

IN THE MATTER OF:

Myers and Sons Construction, LLC	)	Complaint No. R8-2022-0030
4600 Northgate Boulevard, Suite 100	)	For Mandatory Minimum Penalty
Sacramento, California 95834	)	

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This Complaint is issued to Myers and Sons Construction, LLC (Discharger) pursuant to California Water Code (Water Code) section 13399.25 *et seq.*, which authorizes the imposition of administrative civil liability; and Water Code section 13323, which authorizes the issuance of this Complaint. This Complaint is based on allegations that the Discharger failed to submit its 2020-2021 Annual Report by July 15, 2021, as required by Section XVI of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ and Order No. 2018-0028-DWQ, NPDES Permit No. CAS000001 (Industrial General Permit), for which the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board), must impose administrative civil liability pursuant to Water Code section 13399.33.

The Assistant Executive Officer of the Santa Ana Water Board alleges the following:

**BACKGROUND:**

1. The Discharger operates the Radio Road Concrete Batch Plant located at 250 Radio Road in the City of Corona (Facility).
2. The Discharger has been enrolled in the Industrial General Permit since March 9, 2021 when it submitted a Notice of Intent (NOI). The Discharger is required to maintain coverage under the Industrial General Permit because it has a Standard Industrial Classification (SIC) code of 3273 – Ready Mixed Concrete, which is listed in 40 Code of Federal Regulations section 122.26(b)(14) and in Attachment A to the General Permit. Facilities enrolled with NOI coverage in the Industrial General Permit are required to comply with reporting requirements, including the requirement to submit an Annual Report by July 15 of each year.
3. On July 15, 2021, the Discharger’s Annual Report for the 2020-2021 reporting year was due per Industrial General Permit Section XVI.A.<sup>1</sup>

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<sup>1</sup> The General Permit instructs dischargers of storm water to submit permit registration documents to the State Water Resources Control Board in the Stormwater Multiple Application & Report Tracking System (SMARTS), not the Santa Ana Water Board.

4. On August 17, 2021, a Notice of Noncompliance (NNC) was issued to the Discharger indicating that its 2020-21 Annual Report had not been submitted in the Stormwater Multiple Application & Report Tracking System (SMARTS). Signed certified mail receipts were received by Santa Ana Water Board staff on August 19, 2021 indicating that the Discharger had received the NNC. The Discharger did not submit its missing Annual Report in response to the NNC.
5. On September 7, 2021, at 3:10 pm Santa Ana Water Board staff attempted to inspect the Facility to inform the Discharger of its missing Annual Report, however, the Facility was closed and locked and staff was unable to contact the Discharger.
6. On September 21, 2021, a second NNC was issued to the Discharger indicating that its 2020-21 Annual Report still had not been submitted in SMARTS as required by the Industrial General Permit. A signed certified mail receipt was received by Santa Ana Water Board staff on September 23, 2021 indicating that the Discharger had received the NNC. The Discharger did not submit its missing Annual Report in response to the NNC.
7. On November 16, 2021, Santa Ana Water Board staff issued an Expedited Payment Letter (EPL), Settlement Offer No. R8-2021-0073 (Settlement Offer) to the Discharger providing it the opportunity to resolve the alleged violation by paying a mandatory minimum penalty of \$1,868, including staff costs. In addition, the Discharger was advised that the Annual Report for the 2020-2021 reporting year still needed to be submitted in SMARTS. As demonstrated by the certified letter domestic return receipt, the Discharger received the Settlement Offer on November 19, 2021. The EPL requested that the Discharger respond to the Settlement Offer by December 16, 2021.
8. The Discharger did not respond to the Settlement Offer.
9. On December 20, 2021 at 3:00 pm, Santa Ana Water Board staff attempted to contact Mr. James Pickett, the Legally Responsible Person identified on the Discharger's NOI via phone at (916) 283-9950 and obtained cell number (209) 329-2300. Santa Ana Water Board staff called Mr. Pickett's cell phone and left a voicemail message noting the late Annual Report had not been submitted and requesting that Mr. Pickett contact staff to resolve the matter.
10. On January 5, 2022, Santa Ana Water Board staff sent Mr. Pickett an email at the e-mail address listed on the Discharger's NOI. The email reiterated that the Annual Report for the 2020-2021 reporting year had not been received and a response regarding the Settlement Offer had not been submitted.
11. Again, on January 18, 2022, Santa Ana Water Board staff attempted to contact Mr. Pickett via cell phone and left a message requesting a response to the Settlement Offer.

12. Finally, on March 8, 2022, Santa Ana Water Board staff attempted to contact Mr. Pickett via cell phone and main phone number. Santa Ana Water Board staff spoke with a receptionist who indicated that Mr. Pickett was in the office but was not sure where. The receptionist stated they would have Mr. Pickett return Santa Ana Water Board staff's call regarding Settlement Offer R8-2021-0073. Mr. Pickett did not return the call.
13. To date, the Discharger has not submitted the Annual Report for the 2020-2021 reporting year.

## **LEGAL AUTHORITY**

1. Pursuant to Water Code section 13399.31 the regional boards shall conduct a review of annual reports and identify dischargers who have failed to submit required annual reports in applicable NPDES programs.
2. Water Code section 13399.31, subdivision (b), goes on to direct the regional boards to issue an NNC to dischargers who have not submitted the required annual report. The NNC provides written notice to the discharger that they are out of compliance with the reporting requirements in an applicable NPDES permit and that they may be subject to penalties for their noncompliance.
3. If a discharger does not come into compliance in response to the first NNC, Water Code section 13399.31, subdivision (c) directs the regional board to send a second NNC. Failure to submit the required report within 60 days of the first NNC, after a second NNC is sent, subjects the discharger to a mandatory minimum penalty.
4. Pursuant to Water Code section 13399.33, subdivisions(c) and (d), the Discharger is subject to a minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for its failure to submit the required Annual Report for the 2020-2021 reporting year as required by the Industrial General Permit within sixty (60) days after the first NNC was sent, when a second NNC was also sent.
5. Pursuant to Water Code section 13385, the Discharger may also be subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Santa Ana Water Board beginning with the date that the violations first occurred. The formal enforcement action that the Santa Ana Water Board uses to assess such liability is an administrative civil liability complaint, although the Santa Ana Water Board may instead refer such matters to the Office of the Attorney General for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation.

## PROPOSED MANDATORY MINIMUM PENALTY AND ASSESSMENT OF COSTS

1. Pursuant to Water Code section 13399.33, subdivision (c), the Santa Ana Water Board shall administratively impose a penalty in an amount that is not less \$1,000 for the failure to submit the required annual report.
2. Water Code section 13399.33, subdivision (d), further requires the recovery of costs incurred by the Santa Ana Water Board for enforcement actions against dischargers who fail to submit a required annual report in accordance with Water Code section 13399.31. Staff spent eighteen and one-quarter (18.25) hours for this enforcement action resulting in total staff costs of two thousand two hundred and fifty-nine dollars (\$2,259).
3. Therefore, the mandatory minimum liability for the violation alleged herein, including staff costs, is **three thousand two hundred and fifty-nine dollars (\$3,259)**.

## REGULATORY CONSIDERATIONS

4. Notwithstanding issuance of this Complaint, the Santa Ana Water Board retains the authority to assess additional penalties for any violations that have not yet been assessed or for violations that may subsequently occur.
5. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
6. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code section 21000 *et seq.*) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a), paragraph (2).

## MYERS AND SONS CONSTRUCTION, LLC IS HEREBY GIVEN NOTICE THAT:

7. The Assistant Executive Officer of the Santa Ana Water Board proposes an administrative civil liability in the amount of **three thousand two hundred and fifty-nine dollars (\$3,259)**. The amount of the proposed liability is based on the mandatory minimum penalties authorized to be imposed under Water Code section 13399.33.

8. A hearing on this matter will be conducted at the Santa Ana Water Board meeting scheduled on **June 3, 2022**, unless the Discharger submits the attached Waiver Form with signature selecting one of the following options:
  - a. The Discharger waives the hearing by completing the Waiver Form (checking off the box next to Option 1), attached herein, and returns it to the Santa Ana Water Board, along with payment for the proposed liability of **three thousand two hundred and fifty-nine dollars (\$3,259)**
  - b. The Discharger waives the 90-day hearing requirement to extend the hearing date (checking off the box next to Option 2) and returns it to the Santa Ana Water Board, along with their rationale for the extension.

Original signed by:

Ann Sturdivant, PG, CEG, CHG  
Assistant Executive Officer  
Santa Ana Water Board Prosecution Team